



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

VIA ELECTRONIC MAIL
AND FIRST CLASS MAIL

SEP 7 2008

REPLY TO THE ATTENTION OF

tcarey@bellboyd.com

Thomas R. Carey, Esq.
Bell, Boyd & Lloyd LLC
Suite 3300
70 West Madison Street
Chicago, Illinois 60602-4207

EPA Region 5 Records Ctr.



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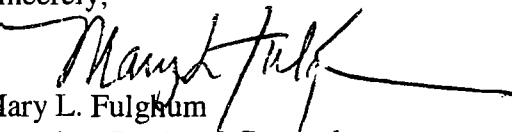
Re: Lindsay Light II 245 E. Ohio
Lindsay Light II Site 05YT OU 6
Chicago, IL

Dear Mr. Carey:

Enclosed is a proposed Administrative Settlement Agreement and Order on Consent ("Settlement Agreement" or "ASAOC"), pursuant to Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §9606, by which your client would agree to undertake the removal actions determined by the United States Environmental Protection Agency ("U.S. EPA") to be necessary at the Lindsay Light II 05YT Site, Operable Unit 6 in Chicago, Illinois. In addition, by signing the Settlement Agreement your client agrees to reimburse the United States for its past costs associated with this Operable Unit and the costs of overseeing the removal actions performed under this ASAOC. While the enclosed has not been approved by the official having the legal authority to bind the U.S. EPA, if your client executes the document, the undersigned and the On-Scene Coordinator for this Site will recommend that the Agency enter the ASAOC in its present form.

If your client wishes to settle this matter on the terms contained in the enclosed ASAOC, please have it executed by a duly authorized agent, and returned to me by no later than Monday, September 7, 2008. If you have any questions or concerns, please call me immediately. If your client is unwilling to enter into the Settlement Agreement as written, we would appreciate being so advised without delay. Thank you for your cooperation in achieving this settlement. We look forward to the cleanup of this property.

Sincerely,


Mary L. Fulghum
Associate Regional Counsel

Enclosure

~~bcc: Mary Fulghum, C-14J~~

Charles Gebien, SE-5J

Eugene Jablonowski, SMF-4J

Mike Joyce, P-19J

Debbie Keating, SE-5J

Cathleen Martwick, C-14J

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMOVAL ACTION

Lindsay Light II 05YT
Operable Unit 6
245 East Ohio
Chicago, Illinois

Docket No.

Respondent:

Fairbanks Development Associates, LLC

Proceeding Under Sections 104, 106(a), 107
and 122 of the Comprehensive
Environmental Response, Compensation,
and Liability Act, as amended,
42 U.S.C. §§ 9604, 9606(a), 9607 and 9622

TABLE OF CONTENTS

I.	JURISDICTION AND GENERAL PROVISIONS	1
II.	PARTIES BOUND	1
III.	DEFINITIONS	2
IV.	FINDINGS OF FACT	4
V.	CONCLUSIONS OF LAW AND DETERMINATIONS	6
VI.	SETTLEMENT AGREEMENT AND ORDER	7
VII.	DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR	7
VIII.	WORK TO BE PERFORMED	8
VIX.	SITE ACCESS	13
X.	DEED RESTRICTIONS/INSTITUTIONAL CONTROLS	13
XI.	ACCESS TO INFORMATION	15
XII.	RECORD RETENTION	16
XIII.	COMPLIANCE WITH OTHER LAWS	17
XIV.	EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES	17
XV.	AUTHORITY OF ON-SCENE COORDINATOR	18
XVI.	PAYMENT OF RESPONSE COSTS	18
XVII.	DISPUTE RESOLUTION	20
XVIII.	FORCE MAJEURE	20
XIX.	STIPULATED PENALTIES	21
XX.	COVENANT NOT TO SUE BY U.S. EPA	25
XXI.	RESERVATIONS OF RIGHTS BY U.S. EPA	25
XXII.	COVENANT NOT TO SUE BY RESPONDENT	26
XXIII.	OTHER CLAIMS	26
XXIV.	CONTRIBUTION	27
XXV.	INDEMNIFICATION	27
XXVI.	MODIFICATIONS	28
XXVII.	NOTICE OF COMPLETION OF WORK	29
XXVIII.	NOTICES AND SUBMISSIONS	29
XXIX.	SEVERABILITY/INTEGRATION/APPENDICES	30
XXX.	EFFECTIVE DATE	31

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("U.S. EPA") and Respondent. This Settlement Agreement provides for the performance of removal actions by Respondent and the reimbursement of certain response costs incurred by the United States at or in connection with the property designated Lindsay Light 05YT Operable Unit ("OU") 6, located at 245 East Ohio Street, Chicago, Illinois, which is bounded by an existing building on the west, Grand Avenue on the south, East Ohio Street on the north, and North Fairbanks Court on the east and for the purposes of the Settlement Agreement is referred to as the "Site."

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA"). This authority has been delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D and to the Director, Superfund Division, Region 5 by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

3. U.S. EPA has notified the State of Illinois ("State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

4. U.S. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees not to contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon U.S. EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate status of the Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter the Respondent's responsibilities under this Settlement Agreement.

6. Respondent is jointly and severally liable for carrying out all activities required by this Settlement Agreement.

7. Respondent shall ensure that its contractors, subcontractors, and representatives comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement.

III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

b. "D'Ancona Trust" shall mean Alfred E. D'Ancona and Lawrence R. Levin, Trustees of the Alfred E. D'Ancona III Trust, Under the Will of Henry R. Levy and Alfred E. D'Ancona III and Terri R. D'Ancona, Trustees of the H. Richard D'Ancona Children's Trust, Dated June 3, 1994.

c. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXX.

d. "Future Response Costs" shall mean all costs, including direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement on or after the Effective Date. Future Response Costs shall also include all costs, including direct and indirect costs, incurred prior to the Effective Date, but paid after that date and all costs, including direct and indirect costs, paid by the United States in connection with the Site between December 31, 2007 and the Effective Date.

e. "Interest" shall mean interest at the rate specified for interest on investments of the U.S. EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

f. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

g. "Parties" shall mean U.S. EPA and Respondent.

h. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site from July 1, 2006 through December 31, 2007.

i. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

j. "Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States has paid or will pay at or in connection with the Site, including such costs expended in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement in connection with the Site.

k. "Respondent" shall mean Fairbanks Development Associates, LLC, a Delaware limited liability corporation and its successors and assigns.

l. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXX Severability/Integration/Appendices). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

m. "Site" shall mean the Lindsay Light II, Operable Unit 6 located at 245 East Ohio Street, Chicago, Cook County, Illinois and depicted generally on the map attached as Appendix A.

n. "State" shall mean the State of Illinois.

o. "Uninvestigated or Unremediated Area" shall mean any portion of the Site which is not radiologically surveyed in accordance with the Work Plan or any portion of the site where any known contamination will remain after completion of the Work.

p. "U.S. EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

d. On June 6, 1996, U.S. EPA issued a Unilateral Administrative Order, Docket No. V- W-96-353 ("Lindsay Light UAO") to the owner of 316 E. Illinois and also to Kerr-McGee Chemical Corporation (succeeded by Tronox LLC) ("Tronox"). The Lindsay Light UAO was amended in 2000 to include property on North Columbus Drive directly across the street from 316 E. Illinois. U.S. EPA since has identified eleven (11) additional removal action operable units associated with the Lindsay Light II facility and, to date, pursuant to U.S. EPA orders, approximately 50,000 cubic yards of thorium-contaminated material associated with the Lindsay Light II facility have been removed from the Streeterville area.

e. The Site is located at 245 East Ohio Street which is the southwest corner of East Ohio Street and North Fairbanks Court in Chicago, Illinois. It is approximately one city block east of 316 East Illinois Street, the Lindsay Light II removal site. The Site historically has been operated as a gas station, and later as an asphalt-covered parking lot, including a small hot-dog stand and two (2) large commercial billboards.

f. By letter dated July 31, 2000, U.S. EPA informed representatives of the D'Ancona Trust that U.S. EPA was investigating the disposal of radioactive materials from Lindsay Light in the area, and further requesting access to the Site to perform a walkover radiological survey to investigate the Site. Representatives of the D'Ancona Trust granted permission to U.S. EPA to perform the walkover survey.

g. U.S. EPA conducted a walkover survey of the Site on September 28 and 29, 2000. U.S. EPA provided the results of the walkover survey to the D'Ancona Trust representatives by letter dated December 1, 2000. U.S. EPA's letter stated, in part, that while the walkover survey indicated that radioactive material was present under the asphalt in one (1) area, and possibly present under two (2) other areas, the radioactive material did not pose an imminent health hazard as long as the material remained shielded by the asphalt surface covering.

h. Following the U.S. EPA's walkover radiological survey, and as part of historic due diligence efforts, Respondent and the D'Ancona Trust hired consultants to perform two (2) radiological surveys of the Site. The results of these studies confirmed that the presence of thorium contamination exceeding the established cleanup level and were provided to U.S. EPA

i. As of the Effective Date, the asphalt surface has remained in place.

j. Respondent plans to initiate excavation and construction at the Site in 2008.

k. Subsurface thorium contamination exceeding the established cleanup level has been identified at the Site. Respondent intends to identify and remove radioactively contaminated soil from the entire Site in accordance with the Work Plan.

q. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any "hazardous material" under Section 3.125 of the Illinois Environmental Protection Act, 415 ILCS 5/3.125 (2002).

r. "Work" shall mean all activities the Respondent is required to perform under this Settlement Agreement.

s. "Work Plan" shall mean the U.S. EPA-approved work plan including schedule described in Section VIII Work to be Performed and which is attached at Appendix B.

IV. FINDINGS OF FACT

9. Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds that:

a. Beginning in 1904, the Lindsay Light Company ("Lindsay Light") manufactured gas lights and gas mantles containing radioactive thorium at several locations in the Streeterville neighborhood of Chicago, Illinois. The production of thorium resulted in "mill tailings," a sandy waste containing radioactive thorium that was used as fill material in the Streeterville area. U.S. EPA has not identified any records of Lindsay Light's thorium mill tailing disposal practices in Chicago. In the City of Chicago, where the soil generally is covered by pavement, sidewalks, buildings, and fill material, it is difficult for radiation detection instruments to confirm the presence or absence of buried thorium contamination until soils are exposed.

b. Lindsay Light corporate records indicate that by September 1936, Lindsay Light completed moving its ore processing and manufacturing operations to the City of West Chicago and discontinued its Streeterville operations. After moving to West Chicago, Lindsay Light and its successors continued to produce thorium as well as other radioactive materials. In West Chicago and nearby areas, the radioactive thorium mill tailings were used as fill material, dispersed by wind, and subject to runoff. U.S. EPA determined that the thorium presented a threat to human health and designated four West Chicago areas as separate sites on the National Priorities List of Superfund Sites. Over 670 residential area properties, a 100-acre park, a sewage treatment plant, and nearly 8 miles of creek and river have been or are being addressed by U.S. EPA-ordered removal actions at the West Chicago facility.

c. In 1994, after buried thorium was discovered at 316 E. Illinois, Chicago, Illinois, a former location of Lindsay Light's ore processing plant, U.S. EPA designated 316 E. Illinois as the "Lindsay Light II" removal site.

l. Respondent performed Phase I and Phase II Environmental Site Assessments at the Site.

m. Respondent has participated in meetings with U.S. EPA regarding the Work Plan.

n. On Friday, May 23, 2008, Respondent purchased the Site from the D'Ancona Trust.

o. On August 4, 2005 U.S. EPA notified Tronox that pursuant to CERCLA and the Lindsay Light UAO, that Tronox was a potentially responsible party at the Site.

p. Respondent is of the view that it has qualified as a Bona Fide Prospective Purchaser of the Site in accordance with Section 101(40) of CERCLA, 42 U.S.C. § 9601(40).

V. CONCLUSIONS OF LAW AND DETERMINATIONS

10. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, U.S. EPA has determined that:

a. The Site is a part of a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Lindsay Light II facility, as identified in the Findings of Fact above, includes a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent is the current owner or operator of the Site as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site.

e. Upon exposure of or intrusion into soils beneath the asphalt covering at the Site, Respondent is the "owner" and/or "operator" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

f. The conditions described in the Findings of Fact above constitute an actual or threatened release of a hazardous substance from the facility into the environment as defined by Sections 101(22) and 101(8) of CERCLA, 42 U.S.C. §§9601(22) and 9601(8).

g. The removal action and any institutional control required by this Settlement Agreement are necessary to protect the public health, welfare, or the environment, 42 U.S.C. § 9604(a)(1), are in the public interest, 42 U.S.C. § 9622(a), consistent with the NCP, and, if carried out in compliance with the terms of this Settlement Agreement, will be done properly and promptly by the Respondent.

VI. SETTLEMENT AGREEMENT AND ORDER

11. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all Appendices to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

12. Respondent has retained one (1) or more contractors to perform the Work and has notified U.S. EPA of the name(s) and qualifications of such contractor(s). Respondent shall also notify U.S. EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work following the Effective Date at least 5 business days prior to commencement of their respective contract duties in furtherance of the Work. U.S. EPA has approved Respondent's radiological consultant, Eli Port of RSSI Inc. U.S. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If U.S. EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify U.S. EPA of that contractor's name and qualifications within three (3) business days of U.S. EPA's disapproval. The contractor must demonstrate compliance with ANSI/ASQC E-4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002), or equivalent documentation as required by U.S. EPA.

13. Respondent has designated, and U.S. EPA approved, Bruce Clegg of Conestoga-Rovers & Associates ("CRA") as the Project Coordinator who shall be responsible for

c. If contamination is discovered within the sidewalk rights-of-ways surrounding the Site or in the utility corridors excavated or intruded upon, radiologically survey and sample as necessary to the existing curb line(s) surrounding three sides of the site and, remove thorium-contaminated soil to 7.1 pCi/g total radium (Ra-226 + Ra-228) including background and, at a minimum, implement 40 C.F.R. §192, if deemed necessary.

d. If any portion of the Site is not radiologically surveyed in accordance with the Work Plan due to interference by existing utilities or infrastructure or if any known contamination will remain after completion of the Work due to interference by existing utilities or infrastructure then Respondent shall identify and depict all locations at the Site that were not radiologically surveyed in accordance with the Work Plan or where any known contamination will remain after completion of the Work and shall implement U.S. EPA-approved deed restrictions or other U.S. EPA-approved institutional controls pertaining to the Site.

e. Respondent has advised U.S. EPA that it has entered into a separate agreement with Tronox ("Tronox Agreement") in which Tronox has agreed to be the owner of thorium-contaminated soils, debris, and material screened for removal from the Site. Respondent also has advised U.S. EPA that the Tronox Agreement makes Tronox responsible for the proper manifesting, transportation, and off-Site disposal at EnergySolutions' Clive Utah facility, the thorium-contaminated soils, debris and material screened for removal from the Site. U.S. EPA can not enforce the Tronox Disposal Agreement, however, and, therefore, Respondent is responsible for compliance with Paragraph 16(b).

17. Work Plan and Implementation. Respondent shall implement the Work Plan, attached as Appendix B, which has been approved in writing by U.S. EPA. Respondent shall provide U.S. EPA with five (5) business days advance notice of the implementation of the Work Plan. The Work Plan shall be performed in accordance with the schedule approved by U.S. EPA. The Work Plan, the schedule contained therein, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

18. Health and Safety Plan. Respondent has submitted, as Appendix G to the Work Plan, for U.S. EPA review and comment, a plan that ensures the protection of the public health and safety during performance of Work under this Settlement Agreement. The Health and Safety was prepared consistent with U.S. EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If U.S. EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by U.S. EPA and shall implement the Health and Safety Plan during the pendency of the removal action.

administration of all actions by Respondent required by this Settlement Agreement. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. U.S. EPA retains the right to disapprove of any subsequent designated Project Coordinator. If Respondent changes the Project Coordinator, and U.S. EPA disapproves of the change, Respondent shall retain a different Project Coordinator and shall notify U.S. EPA of that person's name, address, telephone number and qualifications within four (4) business days following U.S. EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from U.S. EPA relating to this Settlement Agreement shall constitute receipt by Respondent.

14. U.S. EPA has designated Verneta Simon of the Emergency Response Branch, Region 5, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the OSC in accordance with XXIII (Notices and Submissions). Respondent is encouraged to make submissions to U.S. EPA on recycled paper (which includes significant post consumer waste paper content where possible) and using two-sided copies.

15. U.S. EPA and Respondent shall have the right, subject to Paragraph 12, to change their respective designated OSC or Project Coordinator. U.S. EPA shall notify the Respondent, and the Respondent shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than twenty-four (24) hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

16. Respondent shall implement the removal actions required by the approved Work Plan which is attached as Appendix B and perform, at a minimum, the following removal activities in accordance with the Work Plan:

- Based upon soil results, remove, transport and dispose of wastes or contaminants at a RCRA/CERCLA approved disposal facility in accordance with the U.S. EPA off-site rule or otherwise manage in accordance with federal, state and local environmental regulations.
- Remove radioactive wastes or contaminants exceeding 7.1 pCi/g total radium (Ra-226 + Ra-228), including background, cleanup criterion and transport to and dispose of at the EnergySolutions, Inc. ("EnergySolutions"), a disposal facility in Clive, Utah licensed to accept radiological Waste Material from the Site in accordance with the U.S. EPA off-site rule.

19. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 2004, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, Reissued May 2006), or equivalent documentation as determined by U.S. EPA. U.S. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

b. Upon request by U.S. EPA, Respondent shall have such a laboratory analyze samples submitted by U.S. EPA for QA monitoring. Respondent shall provide to U.S. EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by U.S. EPA, Respondent shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify U.S. EPA not less than 3 business days in advance of any sample collection activity, unless shorter notice is agreed to by U.S. EPA. U.S. EPA shall have the right to take any additional samples that U.S. EPA deems necessary. Upon request, U.S. EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

20. Reporting.

a. Respondent shall submit a written progress report to U.S. EPA concerning actions undertaken pursuant to this Settlement Agreement every 30th day after the date of the commencement of Work, until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall submit three (3) copies of all plans, reports or other submissions required by this Settlement Agreement, or any approved work plan. Upon request by U.S. EPA, Respondent shall submit such documents in electronic form.

c. Following Respondent's acquisition of the Site, Respondent shall prior to the conveyance of any interest in real property at the Site (excluding condominium units or parking spaces), give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to U.S. EPA of the transfer or conveyance, including the name and address of the transferee. Respondent also agrees to require that its successors comply with the immediately preceding sentence and Sections IX (Site Access), X (Deed Restriction/Institutional Control Document) and XI (Access to Information).

21. **Final Report.** Within sixty (60) calendar days after completion of all Work required by Section VIII of this Settlement Agreement, Respondent shall submit for U.S. EPA review a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports" and with the guidance set forth in "Superfund Removal Procedures: Removal Response Reporting - POLREPS and OSC Reports" (OSWER Directive No. 9360.3-03, June 1, 1994). The final report shall include a good faith estimate of total direct costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

IX. SITE ACCESS

23. Respondent shall, commencing on the Effective Date, provide U.S. EPA, the State, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

24. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within ten (10) business days after the Effective Date, or as otherwise specified in writing by the OSC. Respondent shall immediately notify U.S. EPA if after using its best efforts it is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts to obtain access. U.S. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as U.S. EPA deems appropriate. Respondent shall reimburse U.S. EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XVI (Payment of Response Costs).

25. Notwithstanding any provision of this Settlement Agreement, U.S. EPA and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. DEED RESTRICTION/INSTITUTIONAL CONTROL DOCUMENT

26. **Post-Removal Site Control.** Consistent with Section 300.415(f) of the NCP and OSWER Directive No. 9360.2-02, upon completion of all Work required by Section VIII of this Settlement Agreement or if any known thorium contamination exceeding total radium of 7.1 pCi/g will remain after completion of the Work then:

a. In accordance with the Work Plan, Respondent shall submit to U.S. EPA a map of the Uninvestigated or Unremediated Area, and

b. If Respondent, its contractors, representatives and agents disturb, expose or intrude upon the soils in the Uninvestigated or Unremediated area, then Respondent, their contractors, representatives and agents shall notify U.S. EPA both by telephone and in writing of plans to work in the Uninvestigated or Unremediated Area at least seventy-two (72) hours prior to (but no more than twenty-one (21) calendar days in advance of) commencing such activities. If material containing total radium in excess of 7.1 pCi/g is identified, the Respondent shall

22. Off-Site Shipments.

a. **Radioactive Waste Material.** Respondent has advised U.S. EPA that Tronox LLC, successor to Kern-McGee Chemical LLC, has agreed in writing to transport radioactive waste material to EnergySolutions, a disposal facility in Clive, Utah licensed to accept radioactive Waste Material from the Site. Prior to the initial shipment of radioactive Waste Material originating from the Site, Respondent shall provide or verify that Tronox provides written notification of such shipment to the appropriate Utah state environmental official and to the OSC.

i. Respondent shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility.

b. **Other Waste Material.** If Respondent encounters any hazardous substances that are not radioactively contaminated in the course of conducting the Work, then before shipping any such non-radioactively contaminated hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondent shall obtain U.S. EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

i. Prior to the initial shipment of non-radioactively contaminated Waste Material originating from the Site, Respondent shall provide written notification of such shipment to the appropriate state environmental official and to the On-Scene Coordinator. Respondent shall comply with the terms and conditions of the notification requirements of Paragraph 22 (a)(i) for each such shipment of non-radioactive hazardous substances, pollutants, and contaminants.

ii. The identity of any facility and state receiving the non-radioactively contaminated Waste Material will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by 22(a) and 22(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

provide a letter report to U.S. EPA explaining how the work was conducted in accordance with the Work Plan within sixty (60) days of completion of the work.

27. Within thirty (30) days of the completion of all Work required by Section VIII of the Settlement Agreement, if any portion of the Site is not radiologically surveyed in accordance with the Work Plan or if any known contamination will remain after completion of the Work, Respondent shall record, with the Recorder of Deeds, Cook County, Illinois, a deed restriction or other institutional control document ("Deed Restriction"), that U.S. EPA has approved in writing for this Site, and Respondent further agrees that the language in the Deed Restriction shall not be modified or removed from the Deed Restriction without pre-approval from U.S. EPA, as described in Paragraph 28.

a. In the event of a conveyance or transfer of property interest, Respondent's obligations under this Settlement Agreement, including, but not limited to, its obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls pursuant to this Section, shall continue to be met by Respondent unless otherwise agreed to by the U.S. EPA in writing. In no event shall the conveyance or transfer of property interest release or otherwise affect the liability of Respondent to comply with all provisions of this Settlement Agreement unless otherwise agreed to among the Parties hereto in writing.

b. The intent of Respondent is to record a Deed Restriction that is applicable to all subsequent owners of the Site. The Deed Restriction will apply to any portion of the Site that is not radiologically surveyed in accordance with the Work Plan or where any known contamination will remain after completion of the Work. The Deed Restriction shall provide the following:

i.) subject to Paragraph 28, a restriction, in perpetuity, on the disturbance of, exposure of or intrusion upon any portion of the Site that a) is not radiologically surveyed in accordance with the Work Plan or b) where any known contamination will remain;

ii.) the right to enforce said restrictions;

iii.) a right of access to the Site;

iv.) prior notice of disturbance, exposure, intrusion, or excavation of the soils in any portion of the Site that is not radiologically surveyed in accordance with the Work Plan or where any known contamination will remain; and

v.) an agreement that when soils are disturbed, exposed, intruded or excavated in those areas, those activities are conducted in accordance with the Work Plan.

c. The Respondent agrees that every subsequent deed or other instrument conveying or transferring a property interest in the Site or any portion thereof shall be subject to the Deed Restriction.

28. U.S. EPA may terminate the restrictions in Paragraphs 26 and 27, in whole or in part, in writing, as authorized by law. If requested by the U.S. EPA, such writing will be executed by the Respondent in recordable form and recorded with the Recorder of Deeds, Cook County, Illinois. Respondent may modify or terminate the above restrictions in whole or in part, in writing, with the prior written approval of U.S. EPA. Respondent may seek to modify or terminate, in whole or in part, the restrictions by submitting to U.S. EPA, for approval, a written application that identifies each such restriction to be terminated or modified, describes the terms of each proposed modification and includes proposed revision(s) to the deed restriction and institutional control document described in Section X (Deed Restrictions/Institutional Control Document). Each application for termination or modification of any restriction shall include a demonstration that the requested termination or modification will not interfere with, impair or reduce protection of human health and the environment. If U.S. EPA makes a determination that an application satisfies the requirements of this Paragraph, including the criteria specified above, U.S. EPA will notify Respondent in writing. If U.S. EPA does not respond in writing to a request to change land use within ninety (90) days of its receipt of that request, unless Respondent agrees to extend this period beyond ninety (90) days, U.S. EPA may be deemed to have denied the request. If a modification to or termination of restriction is approved, Respondent shall record the revised Deed Restriction as approved by U.S. EPA, with the Recorder of Deeds, Cook County, Illinois.

XI. ACCESS TO INFORMATION

29. Respondent shall provide to U.S. EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to U.S. EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

34. At the conclusion of this document retention period, Respondent shall notify U.S. EPA at least sixty (60) days prior to the destruction of any such records or documents, and, upon request by U.S. EPA, Respondent shall deliver any such records or documents to U.S. EPA. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide U.S. EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

35. Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by U.S. EPA or the State and that it has fully complied and will fully comply with any and all U.S. EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. § § 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XIII. COMPLIANCE WITH OTHER LAWS

36. Respondent shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARS") under federal environmental or state environmental or facility siting laws. The Action Memorandums for the Site identified ARARS that Respondent incorporated into the Work Plan.

XIV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

37. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or

30. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to U.S. EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to U.S. EPA, or if U.S. EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

31. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, Respondent shall provide U.S. EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

32. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydro geologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XII. RECORD RETENTION

33. Until six (6) years after Respondent's receipt of U.S. EPA's notification pursuant to Section XXVII (Notice of Completion of Work), Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 6 years after Respondent's receipt of U.S. EPA's notification pursuant to Section XXVII (Notice of Completion of Work), Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of her unavailability, the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and U.S. EPA takes such action instead, Respondent shall reimburse U.S. EPA all costs of the response action not inconsistent with the NCP pursuant to XVI (Payment of Response Costs).

38. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC at (312) 353-2318 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to U.S. EPA within seven (7) business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XV. AUTHORITY OF ON-SCENE COORDINATOR

39. The OSC shall be responsible for overseeing Respondent's implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

XVI. PAYMENT OF RESPONSE COSTS

40. Payment for Past Response Costs.

a. Prior to entering this Settlement Agreement, Respondent, the D'Ancona Trust and Tronox reimbursed U.S. EPA for \$51,535.00 in response costs incurred through June 30, 2006.

b. Within 30 days after the Effective Date, Respondent shall pay to U.S. EPA \$7,701.66 for Past Response Costs. Payment shall be made to U.S. EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Respondent by U.S. EPA Region 5, and shall be accompanied by a statement identifying the name and address of the party making payment, the Site name, and Site/Spill ID Number 05YT, and the U.S. EPA docket number for this action.

c. At the time of payment, Respondent shall send notice that such payment has been made to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590 and to Mary L. Fulghum, Associate Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590.

d. The total amount to be paid by Respondent pursuant to this Paragraph shall be deposited in the Lindsay Light II Special Account within the U.S. EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Lindsay Light II Site, or to be transferred by U.S. EPA to the U.S. EPA Hazardous Substance Superfund.

41. Payments for Future Response Costs.

a. Respondent shall pay U.S. EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, U.S. EPA will send Respondent a bill requiring payment that consists of an Itemized Cost Summary. Respondent shall make all payments within forty-five (45) calendar days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 43 of this Settlement Agreement.

b. The total amount to be paid by Respondent pursuant to this Paragraph shall be deposited in the Lindsay Light II Special Account within the U.S. EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by U.S. EPA to the U.S. EPA Hazardous Substance Superfund.

42. In the event that the payment for Past Response Costs is not made within 30 days of the Effective Date, or the payments for Future Response Costs are not made within 45 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date and shall continue to accrue until the date of payment. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XIX.

43. Respondent may dispute all or part of a bill for Future Response Costs submitted under this Settlement Agreement, only if Respondent alleges that U.S. EPA has made an accounting error, or if Respondent alleges that a cost item is inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs to U.S. EPA as specified in Paragraph 41 on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs

event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

48. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify U.S. EPA orally within twenty-four (24) hours of when Respondent first knew that the event might cause a delay. Within seven (7) calendar days thereafter, Respondent shall provide to U.S. EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if Respondent intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall be grounds for U.S. EPA to deny Respondent an extension of time for performance. Respondent shall have the burden of demonstrating by a preponderance of the evidence that the event is a *force majeure*, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.

49. If U.S. EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by U.S. EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If U.S. EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, U.S. EPA will notify Respondent in writing of its decision. If U.S. EPA agrees that the delay is attributable to a *force majeure* event, U.S. EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XIX. STIPULATED PENALTIES

50. Respondent shall be liable to U.S. EPA for stipulated penalties in the amounts set forth in Paragraphs 51 and 52 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XIX (*Force Majeure*). "Compliance" by Respondents shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance

into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 49 (c) above. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which it prevailed from the escrow funds plus interest within thirty (30) calendar days after the dispute is resolved.

XVII. DISPUTE RESOLUTION

44. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

45. If Respondent objects to any U.S. EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall notify U.S. EPA in writing of its objection(s) within ten (10) calendar days of such action, unless the objection(s) has/have been resolved informally. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondent's position, and all supporting documentation on which such party relies. U.S. EPA shall provide its Statement of Position, including supporting documentation, no later than ten (10) calendar days after receipt of the written notice of dispute. In the event that these 10-day time periods for exchange of written documents may cause a delay in the work, they shall be shortened upon, and in accordance with, notice by U.S. EPA. The time periods for exchange of written documents relating to disputes over billings for response costs may be extended at the sole discretion of U.S. EPA. An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding paragraph. Upon review of the administrative record, the Director of the Superfund Division, U.S. EPA Region 5, shall resolve the dispute consistent with the NCP and the terms of this Settlement Agreement.

46. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs.

XIII. FORCE MAJEURE

47. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any

with all applicable requirements of this Settlement Agreement within the specified time schedules established by and approved under this Settlement Agreement.

51. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in 51 (c) i, ii, iii or iv:

Violation Per Day	Period of Noncompliance
\$500.00	1 st through 14 th day
\$2,000.00	15 th through 30 th day
\$5,000.00	31 st day and beyond

b. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 51(c)(v):

1st Violation- Per Day Penalty	Period of Noncompliance
\$ 500.00	1 st day
\$ 1,000.00	2 nd day
\$ 1,500.00	3 rd through 5 th day
\$ 3,500.00	6 th through 15 th
\$ 7,500.00	16 th day and beyond

2nd Violation- Per Day Penalty	Period of Noncompliance
\$ 1,500.00	1 st day
\$ 2,250.00	2 nd day
\$ 3,500.00	3 rd through 5 th day
\$ 5,000.00	6 th through 15 th
\$10,000.00	16 th day and beyond

3 rd or More Violation Per Day Penalty	Period of Noncompliance
\$ 2,500.00	1 st day
\$ 4,000.00	2 nd day
\$ 7,500.00	3 rd through 5 th day
\$12,500.00	6 th through 15 th day
\$20,000.00	16 th day and beyond

c. Compliance Milestones

- i. Payment of Past Costs due thirty (30) days after the Effective Date of this Settlement Agreement.
- ii. Payment of Future Costs due forty-five (45) days after Respondent's receipt of demand.
- iii. Recording the Deed Restriction within 30 calendar days after completion of all Work required by Section IX of this Settlement Agreement.
- iv. Submit to U.S. EPA a draft map and a final revised map of the Uninvestigated or Unremediated Area in accordance with the Work Plan.
- v. Seventy-two-hour advance notice of intrusive work in Uninvestigated or Unremediated Area as required in Paragraph 26 b.

52. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Paragraphs 20 and 21:

Violation Per Day	Period of Noncompliance
\$250.00	1 st through 14 th day
\$500.00	15 th through 30 th day
\$3000.00	31 st day and beyond

53. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after U.S. EPA's receipt of such submission until the date that U.S. EPA notifies Respondent of any deficiency; and 2) with respect to a decision by the Director of the Superfund Division, Region 5, under Paragraph 45 of Section XVII (Dispute Resolution), during the period, if any, beginning on the 21st day after U.S. EPA submits its written statement of position until the date that the Director of the Superfund Division issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

54. Following U.S. EPA's determination that Respondent had failed to comply with a requirement of this Settlement Agreement, U.S. EPA may give Respondent written notification of

XX. COVENANT NOT TO SUE BY U.S. EPA

59. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, U.S. EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, Past Response Costs, and Future Response Costs. This covenant not to sue shall take effect upon receipt by U.S. EPA of the Past Response Costs due under Section XVI of this Settlement Agreement and any Interest or Stipulated Penalties due for failure to pay Past Response Costs as required by Sections XVI and XIX of this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XVI. This covenant not to sue extends only to Respondent and does not extend to any other person.

XXI. RESERVATIONS OF RIGHTS BY U.S. EPA

60. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

61. The covenant not to sue set forth in Section XX above does not pertain to any matters other than those expressly identified therein. U.S. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definitions of Past Response Costs or Future Response Costs;
- c. liability for performance of response action other than the Work;

the failure and describe the noncompliance. U.S. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether U.S. EPA has notified Respondent of a violation.

55. All penalties accruing under this Section shall be due and payable to U.S. EPA within 30 days of Respondent's receipt from U.S. EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under I XVII (Dispute Resolution). All payments to U.S. EPA under this Section shall be paid by certified or cashier's check made payable to "U.S. EPA Hazardous Substances Superfund," shall be mailed to U.S. Environmental Protection Agency, Program Accounting & Analysis Section, P.O. Box 70753, Chicago, Illinois 60673, shall indicate that the payment is for stipulated penalties, and shall reference the U.S. EPA Site/Spill ID Number 05YT, the U.S. EPA Docket Number, and the name and address of the party making payment. Copies of any check paid pursuant to this Section, and any accompanying transmittal letters, shall be sent to U.S. EPA as provided in Paragraph 40(c).

56. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Settlement Agreement.

57. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until thirty (30) days after the dispute is resolved by agreement or by receipt of U.S. EPA's decision.

58. If Respondent fails to pay stipulated penalties when due, U.S. EPA may institute proceedings to collect the penalties, as well as interest. Respondent shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 53. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of U.S. EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(f) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(f), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that U.S. EPA shall not seek civil penalties pursuant to Section 106(b) or 122(f) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement. Should Respondent violate this Settlement Agreement or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Settlement Agreement pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606. Notwithstanding any other provision of this Section, U.S. EPA may, in its unreviewable discretion, waive in writing any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

d. criminal liability;

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and

f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site.

XXII. COVENANT NOT TO SUE BY RESPONDENT

62. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, or this Settlement Agreement, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Illinois State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 61 (b), (c), and (e) - (f), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

63. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXIII. OTHER CLAIMS

64. By issuance of this Settlement Agreement, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of

Respondent. The United States or U.S. EPA shall not be deemed a party to any contract entered into by Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

65. No action or decision by U.S. EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIV. CONTRIBUTION

66. a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work, Past Response Costs, and Future Response Costs.

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which the Respondent has, as of the Effective Date, resolved its liability to the United States for the Work, Past Response Costs, and Future Response Costs.

c. Nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Section 113(f)(2) and (3), 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action, and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

XXV. INDEMNIFICATION

67. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees

by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXVII. NOTICE OF COMPLETION OF WORK

73. When U.S. EPA determines, after U.S. EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including, *e.g.*, post-removal site controls, payment of Future Response Costs, and record retention, U.S. EPA will provide written notice of completion of Work to Respondent. If U.S. EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, U.S. EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modifies the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the U.S. EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXIX. NOTICES AND SUBMISSIONS

74. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to U.S. EPA and Respondent.

As to U.S. EPA:

Mary L. Fulghum
Cathleen M. Martwick
Associate Regional Counsel
U.S. EPA (C-14J)
77 W. Jackson Blvd.
Chicago, Illinois 60604

and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States. The Federal Tort Claims Act (28 U.S.C. §§ 2671, 2680) provides coverage for injury or loss of property, or injury or death caused by the negligent or wrongful act or omission of an employee of U.S. EPA while acting within the scope of his or her employment, under circumstances where U.S. EPA, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

68. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

69. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXVI. MODIFICATIONS

70. The OSC may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by U.S. EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

71. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 70.

72. No informal advice, guidance, suggestion, or comment by the OSC or other U.S. EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted

Verneta Simon, P.E.
On-Scene Coordinator
U.S. EPA (SE-5J)
77 W. Jackson Blvd.
Chicago, Illinois 60604

Gene Jablonowski
Health Physicist
U.S. EPA (SMF-4J)
77 W. Jackson Blvd.
Chicago, Illinois 60604

Vanessa Mbogo
Comptroller's Office
U.S. EPA (MF-10J)
77 W. Jackson Blvd.
Chicago, Illinois 60604

As to Respondent:

Fairbanks Development Associates, LLC
Attention: Corporate Secretary
33 West Monroe Street
Suite 1900
Chicago, IL 60603

Thomas R. Carey
Bell, Boyd & Lloyd LLP
70 W. Madison St., Ste. 3100
Chicago, IL 60602-4207

XXIX. SEVERABILITY/INTEGRATION/APPENDICES

75. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondent has sufficient cause not to comply with one or more provisions of this Settlement Agreement, Respondent shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

76. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are incorporated into this Settlement Agreement:

Appendix A Site Map.
Appendix B Work Plan.

XXX. EFFECTIVE DATE

77. This Settlement Agreement shall be effective upon signature of this Settlement by the Director, Superfund Division, U.S. EPA Region 5.

The undersigned representative of the Respondent certifies that s/he is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party s/he represents to this document.

Agreed this ____ day of August 2008.

For Respondent FAIRBANKS DEVELOPMENT ASSOCIATES LLC

By: _____

Title _____

IN THE MATTER OF:

Lindsay Light II, OU 6
Chicago, Illinois

It is so ORDERED and Agreed this ____ day of August 2008.

BY: _____
Richard C. Kurl, Director
Superfund Division
United States Environmental Protection Agency
Region 5